Attachment #3

ACF Administration for Children and Families	**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES** **Administration on Children, Youth and Families**	
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Policy Announcement

TO: State and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act (the Act); ACF Regional Administrators, Regions I – X

SUBJECT: Clarifying Guidance Regarding Candidates for Foster Care

LEGAL AND RELATED REFERENCES: Section 471(a)(2) of the Act; Departmental Appeals Board Decisions (DAB) Nos. 844 and 1428; 45 CFR §205.100; 45 CFR §§1355.20 and 1356.60(c); ACYF-PIQ-85-06 (6/5/85), ACYF-PA-87-05 (10/22/87), ACYF-PIQ-96-01 (10/08/96)

BACKGROUND:

Pursuant to ACYF-PA-87-05, a State may claim reimbursement for certain title IV-E administrative functions performed on behalf of a child the State reasonably views as a candidate for title IV-E foster care maintenance payments, regardless of whether such child ever receives Federal foster care payments. In order to be considered a candidate for title IV-E foster care maintenance payments, a child must be eligible for Aid to Families with Dependent Children (AFDC) (as in effect on July 16, 1996) and at serious risk of removal from home as evidenced by the State agency actively pursuing that removal or engaging in reasonable efforts to prevent it. A determination of title IV-E candidacy permits a State to claim the full Federal share (50%) of child specific title IV-E administrative costs.

Cognizant of the administrative burden associated with testing each child for AFDC eligibility to determine title IV-E candidacy, we issued ACYF-PIQ-96-01 which allows States to forego testing for AFDC eligibility in favor of using cost allocation to claim for allowable title IV-E administrative functions performed on behalf of children who are candidates for foster care maintenance payments. The allocation must be based both on a determination of candidacy for foster care and potential title IV-E eligibility. States typically use a ratio of title IV-E to non-title IV-E cases to satisfy the requirement that foster care candidates potentially be eligible for title IV-E. If, for example, 40 percent of a State's foster care population is eligible for title IV-E foster care maintenance payments, then it can estimate reasonably that the same percentage of children it has identified as foster care candidates are title IV-E candidates, i.e., 40 percent of the foster care candidates potentially are eligible for title IV-E. The State then legitimately may claim Federal financial participation (FFP) for 40 percent of the

allowable administrative costs associated with the pool of children identified as candidates for foster care. Of course, if a candidate enters foster care, the State must document the child's individual eligibility for title IV-E in order to claim FFP on his/her behalf.

It has come to our attention, however, that some States have adopted a more expansive interpretation of ACYF-PA-87-05 and ACYF-PIQ-96-01 in making determinations with respect to foster care candidacy. Some States, for example, are claiming reimbursement improperly for activities performed on behalf of children who informally have been described as "at risk of becoming foster care candidates" due to issues such as substance abuse, gang involvement, teen pregnancy, or displaying certain maladaptive behaviors. Others have claimed reimbursement for activities performed on behalf of children who have no official involvement with the State title IV-E agency (hereafter referred to by State or State agency). Such children fail to meet the standard for foster care candidacy set forth in Federal policy and Departmental Appeals Board (DAB) decisions. We are accordingly issuing this clarifying guidance. We are taking this opportunity to issue clarifying guidance with respect to related issues, as well.

POLICY INTERPRETATION:

At What Point May A Child Be Considered A Candidate for Foster Care?

A candidate for foster care is a child who is at serious risk of removal from home as evidenced by the State agency either pursuing his/her removal from the home or making reasonable efforts to prevent such removal. The basis for determining when a child may be considered a candidate for foster care can be found in statute, ACYF-PA-87-05, and Departmental Appeals Board decisions:

Statute. Section 471(a)(15)(B)(i) of the Act provides the frame of reference for determining the point at which a child becomes a candidate for foster care by requiring a State to make reasonable efforts to prevent a child's removal from home. A child may not be considered a candidate for foster care solely because the State agency is involved with the child and his/her family. In order for the child to be considered a candidate for foster care, the State agency's involvement with the child and family must be for the specific purpose of either removing the child from the home or satisfying the reasonable efforts requirement with regard to preventing removal.

ACYF-PA-87-05 stipulates the three acceptable methods for documenting a child's candidacy for title IV-E foster maintenance payments. The existence of these forms of documentation indicates that a child legitimately may be considered a candidate for foster care:

"...1) [a] defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child..."

> The decision to remove a child from home is a significant legal and practice issue that is not entered into lightly. Therefore, a case plan that sets foster care as the goal for the child absent effective preventive services is an indication that the child is at serious risk of removal from his/her home because the State agency believes that a plan of action is needed to prevent that removal.

"...2) an eligibility determination form which has been completed to establish the child's eligibility under title IV-E..."

> Completing the documentation to establish a child's title IV-E eligibility is an indication that the State is anticipating the child's entry into foster care and that s/he is at serious risk of removal from home. Eligibility forms used to document a child's candidacy for foster care should include evidence that the child is at serious risk of removal from home. Evidence of AFDC eligibility in and of itself is insufficient to establish a child's candidacy for foster care.

"...3) evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings..."

> Clearly, if the State agency has initiated court proceedings to effect the child's removal from home, s/he is at serious risk of removal from the home.

Departmental Appeals Board Decisions. DAB Decision No. 1428 offers the following guidance for identifying the point at which a child may be considered a candidate:

> "...The methods of documenting candidacy in ACYF-PA-87-05 involve activities which occur at a point when the state has initiated efforts to actually remove a child from his or her home or at the point the state has made a decision that the child should be placed in foster care unless preventive services are effective..."

The DAB also ruled in Decision No. 1428 that a report of child abuse or neglect is insufficient for establishing a child's candidacy for foster care:

> "...The fact that a child is the subject of [a child abuse/neglect report] falls far short of establishing that the child is at serious risk of placement in foster care and thus of becoming eligible for IV-E assistance..."

A candidate, in the opinion of the DAB, is a child who is at serious risk of removal from his/her home because the State is either pursuing that removal or attempting to prevent it. A child cannot be considered a candidate for foster care when the State agency has no formal involvement with the child or simply because s/he has been described as "at risk" due to circumstances such as social/interpersonal problems or a dysfunctional home environment.

Trial Home Visits

A State often will provide supportive services to a child and family during the course of a trial home visit to facilitate the success of such visit. We believe that the services and supports provided to a child on a trial home visit can be considered reasonable efforts to prevent the child's removal from the home and return to foster care. The State, therefore, may claim Federal reimbursement for the allowable title IV-E administrative costs associated therewith. However, a child may not be simultaneously both in foster care and a candidate for foster care. In addition, the State must document the child's candidacy for foster care pursuant to ACYF-PA-87-05. The State may document in the child's case plan its intent for the child to return to foster care if the services provided during the course of the trial home visit prove unsuccessful.

Aftercare

DAB Decision No. 844 permits States to consider a child who is receiving aftercare services to be a candidate for foster care. In such circumstances, services or supports provided to the newly reunited family can be considered the State agency's reasonable efforts to prevent the child's removal from the home and re-entry into foster care. The State, therefore, may claim Federal reimbursement for the allowable title IV-E administrative costs associated therewith. However, in order to consider a child who is newly reunited with his/her family a candidate for foster care, the State must document the child's candidacy pursuant to one of the methods specified in ACYF-PA-87-05. The State may, for example, develop a case plan that demonstrates its intent to remove the child from home and return him/her to foster care if the aftercare services prove unsuccessful.

Duration of Candidate Status.

Pursuant to DAB Decision No. 844, ACYF-PA-87-05 instructs a State to cease claiming Federal reimbursement when it determines, at any point prior to the removal of a child from home, that such child is no longer a candidate. The definition of candidacy that emphasizes a removal or reasonable efforts to prevent it suggests that a child may be considered a candidate only for a finite period of time. We do not prescribe the maximum length of time a child may be considered a candidate; however, a State must document its justification for retaining a child in candidate status for longer than six months.

Who Must Make the Determination With Respect to Candidacy?

The State agency (or another public agency that has entered into an agreement with the State title IV-E agency pursuant to section 472(a)(2) of the Act) must determine whether a child is a candidate. The basis for this clarification is set forth in regulation and Departmental policy:

Regulation. A determination with respect to candidacy is a type of eligibility determination because title IV-E funds are expended as the result of a determination with respect to a child's status. The regulations at 45 CFR §205.100 require that officials of the State agency perform administrative functions that require the exercise of discretion. Under long-standing Departmental policy that originates with the 1939 amendments to the Social Security Act, the determination of an individual's eligibility for a Federal entitlement is considered a function that requires the exercise of discretion. Accordingly, determinations with respect to foster care candidacy must be made by employees of the State agency, or of another public agency that has entered into an agreement with the State agency pursuant to section 472(a)(2) of the Act. We are aware that some States contract with consultants to assist in identifying children in the foster care caseload who may be eligible for title IV-E. These contractors are not employees of the State agency and may not make determinations with respect to title IV-E eligibility or foster care candidacy. The same holds true for the contractors of public agencies that enter into title IV-E agreements pursuant to section 472(a)(2) of the Act. Only employees of the public agency are authorized to make the determination of title IV-E eligibility and/or foster care candidacy.

Departmental Policy. We reinforce throughout ACYF-PA-87-05 that the State agency must make the candidacy determination:

> "...reimbursement is limited to those individuals the **State** reasonably views as candidates..." (page 2.)
>
> "...[s]hould the **State** determine that the child is no longer a candidate..." (emphasis added) (page 3.)

In addition, the three acceptable forms of documentation that establish a child's candidacy for title IV-E indicate that the State agency must make the determination with respect to candidacy:

"...1) [a] defined case plan which clearly indicates that, absent effective preventative services, foster care is the planned arrangement for the child..."

> The DAB, in Decision No. 844, ruled that the development of a case plan is a title IV-E administrative function that may be performed on behalf of candidates in accordance with section 471(a)(16) of the Act. The case plan identified in ACYF-PA-87-05 is thus the State agency's case plan developed in compliance with section 471(a)(16) of the Act.

"...2) an eligibility determination form which has been completed to establish the child's eligibility under title IV-E..."

> As stated earlier, only employees of the State agency can make the determination with respect to candidacy because it is a type of eligibility determination. The form referenced in ACYF-PA-87-05 is thus the State agency's documentation of the child's eligibility for title IV-E.

"...3) evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings..."

> A candidate is a child for whom the State agency is either seeking a removal or fulfilling the statutory requirement to attempt to prevent removal from the home. Among other things, the State agency is required to obtain a judicial determination sanctioning or approving such an attempt to prevent removal with respect to reasonable efforts to qualify the child for title IV-E foster care maintenance payments. The judicial proceedings referenced in ACYF-PA-87-05 are those proceedings the State agency initiates to obtain the judicial determinations related to the removal of a child from home.

Allowable Costs.

As noted in existing policy and DAB decisions (see ACYF-PA-87-05 and DAB Decision Nos. 844 and 1428), pre-placement administrative functions for which States wish to claim FFP must be "closely related" to the administrative cost items specified at 45 CFR §1356.60. They are subject to the same limitations that are in place when such cost items are claimed for children in foster care. For example, investigating claims of child abuse/neglect and completing case progress notes with regard to the delivery of services are not allowable title IV-E administrative functions. Nor do the actual services delivered to foster care candidates in compliance with the reasonable efforts requirements qualify as title IV-E administrative costs.

When FFP May Begin.

States may begin claiming for administrative functions performed on behalf of foster care candidates in the month in which the child's candidacy is documented. States may not claim FFP for title IV-E administrative functions performed prior to the documentation of candidacy because a child is not a candidate for foster care until documented as such pursuant to ACYF-PA-87-05.

Children in Unlicensed Foster Homes

An August 17, 1993 memorandum from the Acting Commissioner of the Administration on Children, Youth, and Families to the Administration for Children and Families Regional Administrators allowed States to claim FFP for title IV-E administrative costs associated with a child who otherwise would be eligible for title IV-E foster care maintenance payments but for his/her placement in an unlicensed foster family home. The aforementioned practice was conceptualized by considering such child to be a candidate. We have since concluded that, while the policy itself, with certain limitations, is legally supportable, the rationale used in the 1993 memorandum is flawed. The term candidate refers to a child prior to his/her placement into foster care. Therefore, a child who has already been removed from home and placed in foster care cannot be considered a candidate. Once a child has been placed in foster care, the statute, at section 472, sets forth certain eligibility criteria. All of the eligibility criteria at section 472 of the Act must be satisfied, including placement in a licensed foster family home or child-care institution, in order for the child to be eligible and thus, for the State to claim allowable administrative costs, with one limited exception.

FFP will continue to be available to States for the administrative costs incurred on behalf of a child placed in a relative foster family home while the State is in the process of licensing that home. If the State is not in the process of licensing the home, then it may not include the child when determining its administrative cost ratio. Moreover, if the State fails to fully license the relative foster family in question within the normal time frame for licensing foster family homes in that State, it may no longer consider that child when determining its administrative cost ratio.

We think such an approach gives effect to the instruction at section 471(a)(19) of the Act that requires States to consider giving relatives preference when making placement decisions. Admittedly, a State will not have a pool of licensed relative foster family homes in which to immediately place a child when s/he enters foster care. The State does, however, have a pool of licensed, unrelated foster family homes in which to immediately place a child who enters foster care. The statutory requirements to consider giving relatives preference in making placement decisions and to place children in licensed foster family homes create competing priorities for States. We think that permitting States to claim title IV-E administrative costs, but not foster care maintenance payments, on behalf of a child placed in an unlicensed related foster family home while the home is being licensed facilitates compliance with these two provisions.

Children Placed in Public Child-Care Institutions that Accommodate more than 25 Children

Section 472(c)(2) of the Act specifically excludes public child-care institutions that accommodate more than 25 children from the definition of "child-care institution" therein, making such facilities unallowable under title IV-E. Therefore, a child placed in a public child-care institution that accommodates more than 25 children is not eligible for title IV-E, and thus the State may not claim administrative costs on his/her behalf. Nor may the State consider such child to be a candidate for the purpose of claiming title IV-E administrative costs.

Children Placed in Facilities Not Considered Foster Care.

States should note that, in accordance with ACYF-PIQ-85-06, title IV-E administrative costs cannot be claimed on behalf of a child who is placed in a facility that is not a foster care facility, even if the State intends to place such child in foster care at a later date. Pursuant to the definition of foster care at 45 CFR 1355.20, facilities that are outside the scope of foster care include, but are not limited to: detention facilities; psychiatric hospitals; forestry camps; or facilities that are primarily for the detention of children who are adjudicated delinquent. Children placed in such facilities are not in foster

care and may not be considered candidates for foster care because they have already been removed from home.

Children Eligible for Benefits under Title IV-E and Supplemental Security Income (SSI).
The 1993 memorandum mentioned above also permitted a State to include children who are eligible for title IV-E but who are receiving SSI in lieu of title IV-E foster care maintenance payments when determining its administrative cost ratio. Again, this practice was conceptualized by considering these children candidates. While the policy itself is sound, a child who is in foster care is not a candidate because s/he has already been removed from home. If a child is fully eligible for title IV-E, including placement in a licensed foster family home or child-care institution, a State's choice to fund that child's board and care through SSI rather than title IV-E does not negate that child's eligibility for title IV-E. The State may, therefore, claim FFP under title IV-E for title IV-E administrative functions performed on behalf of that child.

INQUIRIES: ACF Regional Administrators.

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and Families